

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANGELA SUNSHINE,

Plaintiff

v.

FUNXIONAL BEHAVIOR ANALYSIS
LLC,

Defendant

Case No.: 2:24-cv-00558-APG-EJY

**Order (1) Granting Motion to Dismiss
Federal Claims and (2) Remanding State
Law Claims**

[ECF No. 6]

Plaintiff Angela Sunshine sued her former employer, defendant Funxional Behavior Analysis LLC, in state court. She asserts claims for (1) disability discrimination under state and federal law; (2) violation of the Family Medical Leave Act (FMLA); (3) tortious discharge under state law; (4) retaliation under state and federal law; and (5) negligent hiring, training, and supervision under state law. Funxional removed the case to this court based on federal question jurisdiction. ECF No. 1.

Funxional moves to dismiss or for summary judgment, arguing that Sunshine's claims under the Americans with Disabilities Act (ADA) fail because Funxional had fewer than 15 employees at all relevant times, so it was not covered by the ADA. Similarly, it argues that it did not have enough employees and Sunshine did not work enough hours to fall within the FMLA's coverage. Funxional contends that the tortious discharge claim fails because Sunshine has an adequate statutory remedy. Finally, Funxional argues that the negligent hiring, training, and supervision claim is inadequately pleaded. Sunshine did not respond.

Because Sunshine did not respond to Funxional's motion to dismiss, I grant it as unopposed. LR 7-2(d). However, because it is possible that Sunshine could plausibly allege her

1 claims, I grant her leave to do so. *See Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma Cnty.*,
2 708 F.3d 1109, 1118 (9th Cir. 2013) (“As a general rule, dismissal without leave to amend is
3 improper unless it is clear that the complaint could not be saved by any amendment.”
4 (simplified)). In amending, Sunshine must address the issues regarding the federal claims that
5 Funxional raises in its motion. I advise the parties that if Sunshine does not plausibly allege a
6 federal claim in the amended complaint, I will decline to exercise supplemental jurisdiction over
7 any state law claims and will remand those claims to state court. If Sunshine does not file an
8 amended complaint, then I will dismiss her original complaint without prejudice and close this
9 case.

10 I THEREFORE ORDER that defendant Funxional Behavior Analysis LLC’s motion to
11 dismiss **(ECF No. 6) is GRANTED as unopposed.**

12 I FURTHER ORDER that plaintiff Angela Sunshine may file an amended complaint by
13 May 28, 2024. Failure to file an amended complaint by that date will result in dismissal of the
14 original complaint without prejudice and this case will be closed.

15 DATED this 7th day of May, 2024.

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18 ANDREW P. GORDON
19 UNITED STATES DISTRICT JUDGE
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